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SUBJECT: UNGA: UNSC REFORM: INTERGOVERNMENTAL NEGOTIATIONS
ON THE VETO

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11. (SBU) Summary: The informal plenary of the General Assembly met March 16 and 17 for intergovernmental negotiations on Security Council expansion focusing on the question of the veto. 74 delegations spoke during the day-and-a-half discussion with most stating their general aversion to the veto. The African Group and Group of Four (G4) states (and supporters) called for an extension of the veto to new permanent members with the caveat that they actually not exercise it until a future review conference, but ultimately believe the veto should be abolished. The Uniting for Consensus (UFC) bloc, which does not support an expansion of permanent members, spoke against any extension of the veto to new permanent members. A number of other states also opposed extension of the veto to new permanent members, saying that a Council with ten or more veto-wielding members would be less efficient and even less likely to relinquish the veto in the future. Much of the discussion centered on how to restrict use of the veto, both voluntarily and through Charter amendments to Article 27. All five current permanent members spoke but only the UK, Russia, and the U.S. articulated that a change to the current veto structure is not realistic. The next meeting will be March 24 on "regional representation." End summary.

12. (SBU) Comment: During the final session, the Indian Perm Rep definitively linked a permanent seat to the veto; if both were not extended than neither should be. His statement may have sounded the death knell on an expansion of permanent seats. The German Perm Rep's suggestion for longer-term seats of 12-15 years under an intermediate option may indicate an openness by G4 members to more seriously consider the intermediate option. The intermediate option may gain further traction in the next meeting, even though it will be focused on regional representation which should theoretically focus more on non-permanent seats. However, we still do not expect real progress on reform to accelerate until well into or after the second round of intergovernmental negotiations, which will not start until May. End Comment.

Overview

13. (SBU) Intergovernmental negotiations on Security Council expansion continued March 16 and 17 with meetings of the informal plenary on the second of five key issues -- "the question of the veto." 74 delegations spoke, including the

United States, during the three sessions, and eight delegations re-took the floor during the interactive portion of the final session. As he did before previous meetings, Afghan Perm Rep and Chairman of the intergovernmental negotiations Zahir Tanin circulated a letter to the membership on March 13. This one included an excerpt on the "question of the veto" from the Open-ended Working Group's 61st session report (A/61/47). (Note: USUN e-mailed Tanin's March 13 letter to IO/UNP. End note.) In both his March 13 letter and in his remarks on March 16 and 17, Tanin expressed satisfaction with delegations' statements clarifying their original positions and occasionally demonstrating flexibility through new proposals, thereby "injecting life blood" into the negotiations.

14. (SBU) The tone in these meetings quickly turned acerbic, beginning with the Indian Perm Rep's derogatory reference to the Italian Perm Rep as the "leading light of the UFC" who was arithmetically challenged. The Italian Perm Rep returned the compliment in the last session, referring to the Indian Perm Rep as the "lodestar of the G4" who did not correctly interpret his intervention even though a hard copy was provided. The session ended with a plea from the Jamaican Perm Rep for an improvement in the tone and for greater respect for the diversity of interventions since more than just the two main blocs are participating.

Almost unanimous aversion to veto

15. (SBU) 62 of the 74 delegations called for abolition of the veto, with most describing it as "anachronistic." Others

said the historical circumstances that led to its development no longer exist. Many complained that the use of the "hidden veto" or "pocket veto" (the threat of a veto) had increased. The Italian Perm Rep noted that "there is hardly ever a need to resort to the veto, since the very prospect of its use suffices to shape the Council's consultations and subsequent decisions." (Comment: The Norwegian expert told PolOff that while many European delegations publicly complain about the veto, they privately acknowledge that they are fine with the status quo. End comment.)

16. (SBU) The membership was divided, however, with 34 delegations (or 70 including all members of the African Group) wanting to perpetuate this "anachronistic" practice and extend it to new permanent members, and 28 delegations not wanting to enlarge the club and/or attempting to restrict permanent members' future use of the veto. As an example of the first group, the Syrian Perm Rep specifically castigated a "well-known state" for its use of the veto to protect Israel and called for Council reform to take away this right but also noted that Syria believes new permanent members should get the same privileges as current permanent members. The Nicaraguan Perm Rep also said the veto should be eliminated because it is undemocratic but then he called for new permanent members to be given the same veto rights as current permanent members.

17. (SBU) The second group is composed of a diverse group states, some who support additional permanent members without the veto and some who are against additional permanent members. For example, Uruguay supports the G4's quest for permanent seats but is against the extension of the veto to new permanent members and will table amendments to that effect. The Guatemalan Perm Rep noted that a Security Council with ten members wielding the veto could result in more dysfunction than currently exists. The Ukraine Perm Rep urged the promotion of a veto-free Council and said that non-permanent members could already collectively cast a veto with seven negative votes. A large number of delegations, including the United States, did specifically state that the veto question should not stand in the way of Council expansion. Several states, including Switzerland, noted that their domestic ratification processes would never support a proposal that included an extension of the veto.

African States insist on extension
of veto for new permanent members

¶18. (SBU) The Sierra Leone Perm Rep, speaking for the African Group, said that the veto should be abolished but that "as long as the veto right exists, it should be extended to new permanent members." He reiterated the Ezulwini Consensus that calls for two permanent seats for African states with "all of the privileges and prerogatives of current permanent members." 16 other members of the African Group reiterated this viewpoint, with four more taking the floor during the interactive session at the end. The Namibian Perm Rep stressed that it would be completely unacceptable to have two categories of permanent members, one with the veto and one without it. The Ethiopian Perm Rep said that, while African states insist on the right of the veto for new permanent members, there are no plans to actually exercise the veto. The Egyptian Perm Rep said it was not acceptable to delay this issue until a future review conference.

¶19. (SBU) The Cuban Perm Rep spoke in favor of the African position and said that since most Council issues are linked to Africa, African members should enjoy the same prerogatives as other permanent members. In general, he noted that Cuba would prefer that the veto be limited and then eliminated.

G4 joins African states, willing
to defer use of veto for 10 years

¶10. (SBU) The Group of Four (G4) countries closely aligned themselves with the African Group on this issue, calling for the veto to be abolished but, if not, it should be extended to all new permanent members. The Indian Perm Rep reminded

the membership that the Charter actually provides in Article 27 (3) that a party to a Chapter VI dispute should not vote and, by extension, use its veto, but that the current P-5 have flaunted this provision. He said that only with the addition of new permanent members with veto power would there be sufficient "peer pressure" to return to enforcement of this provision. The Brazilian Perm Rep echoed this, saying that the only way to reform the exercise of the veto is through the addition of new permanent members with the veto who are committed to a more transparent Security Council. The Indian Perm Rep noted that if new permanent members do not receive the veto, then Article 27(3) would have to be specifically amended to exclude them since it currently reads "concurring votes of the permanent members."

¶11. (SBU) In an attempt to show flexibility, the Indian Perm Rep said the veto should be extended immediately to new permanent members but its exercise would be postponed until a future review conference. At the end of the last session, the Indian Perm Rep underlined the "almost unanimity of unhappiness with the veto," but the choice is either to extend permanence and the veto or to not extend either. (Comment: With that statement, the Indian Perm Rep firmly placed his country's future permanent seat squarely with the African Group's position -- permanent seats must come with the veto. Given the P-5's resistance to veto extension, this will not likely prove a fruitful avenue of pursuit. End comment.)

¶12. (SBU) The German Perm Rep showed more flexibility on the veto issue and suggested three possibilities: (1) new permanent members be given the veto but not exercise it until after a review conference; (2) permanent members without a veto; or (3) postpone discussion of the issue until a review conference. He stressed that the veto issue should not block reform of the Security Council. He then suggested that an alternative might be to consider "real, long-term members of 12-15 years" that could participate in the long-term planning of the Council in order to alter the power structure of the Council. The UK Perm Rep later responded to this variation

on the intermediate option by noting that his government was open to the proposal and not wedded to a particular term limit.

¶13. (SBU) The Japanese Perm Rep added that the membership should be realistic in its proposals about veto restrictions, especially those that are legally binding. He voiced support for voluntary initiatives, such as explanations of vote, that would enhance transparency.

UFC

¶14. (SBU) The Uniting for Consensus (UFC) bloc, given its opposition to new permanent members, remains stridently against the extension of the veto and instead seeks to restrict its use. The Italian Perm Rep said, "While it may have been born out of historical necessity, it no longer has any plausible justification in a community of sovereign states governed by the...Charter and strengthened by ...international norms and practices..." He proposed a moratorium on the current use of the veto. As another alternative to provide greater regional involvement, he suggested that future Council action on a certain region would require the unanimous support of all Council members from that region. The Spanish Perm Rep said it is difficult to match the veto to the concept of the sovereign equality of member states, and the existence of the veto does not lead to greater efficiency and effectiveness on the part of the Council. The Pakistani Perm Rep stressed that the veto question should not be left for a future review conference.

Specific proposals to amend
Article 27: Council voting

¶15. (SBU) Many delegations did acknowledge that it was unrealistic to pursue attempts to abolish the veto, given Article 108 of the UN Charter (all five permanent members must ratify any Charter amendment), and instead sought to

restrict its use. The Costa Rican Perm Rep advocated restrictions on the use of the veto, stressing that "responsible use of the veto can strengthen the Security Council, rather than weaken it." The following specific proposals were made:

-- The Philippines Perm Rep noted that Article 27 makes a distinction between voting on procedural matters and voting on all other issues, that the concurrence of the permanent members is needed only on non-procedural matters. He called for an amendment to Article 27 to define procedural matters to include the admission of new members; the suspension of members; the expulsion of members; the use of Article 94; and advisory opinions of the ICJ. The Venezuelan Perm Rep added to this list, saying a veto should not be used in the selection of a new Secretary-General.

-- The Mexican Perm Rep said that Mexico has held the same view since 1945 -- the use of the veto should be restricted to Chapter VII of the Charter. The Argentine, Colombian, Canadian, Vietnamese, and Mongolian Perm Reps agreed on the need to restrict the veto to Chapter VII issues, and sanctions issues, according to the Colombian.

-- The Philippines Perm Rep termed the Council an "agent of member states" and said there should be a deterrent for the misuse of veto power. Both he and the St. Vincent and the Grenadines Perm Rep called for a veto to be overturned by an absolute majority vote in the GA or by a two-thirds vote in the Security Council so the Security Council would not be subservient to one permanent member. The Mexican, Argentine, and Vietnamese Perm Reps supported the GA overriding a Council veto with a vote of two-thirds. The Solomon Islands Perm Rep said the GA should hold the Council accountable for every veto cast.

-- The Spanish, Colombian, and Netherlands Perm Reps suggested that there be an increase to two in the number of vetoes cast to prevent Council action. The Spanish Perm Rep recalled that this was a U.S./UK proposal at Dumbarton Oaks in 1944. The Egyptian Perm Rep suggested even a triple veto, as long as new permanent members are extended the veto.

-- The Guatemalan Perm Rep did raise replacing the current voting and veto system with a weighted voting system based on relevant contributions to peacekeeping and/or the budget. No other delegations commented on this.

-- The Philippines, the Netherlands, Pakistan, Singapore, Mexico, Argentina, Belgium, Barbados, Costa Rica, Fiji, Canada, Liechtenstein, Grenada, the Czech Republic, and Rwanda all called for non-use of the veto in matters of genocide, crimes against humanity, and crimes against international humanitarian law. The Rwandan Perm Rep highlighted the Council's failure to act in 1994 in Rwanda. The Netherlands Perm Rep referred to a Small Five States (S5) group proposal from 2006 (A/60/L.49 - not adopted) and also suggested including the Secretary-General's recent suggestion to include matters involving the "responsibility to protect" on the list of subjects upon which a veto cannot be cast. The St. Vincent and the Grenadines Perm Rep called for these limitations on the use of the veto to be legally binding.

-- The Philippines, Netherlands, Colombia, Barbados, Fiji, Liechtenstein, Singapore, Ukraine, South Africa, and Mongolia all called for explanations of vote for all vetoes. The Pakistani Perm Rep suggested that these explanations of vote could be reviewed by the GA and then referred to the ICJ for arbitration.

P-5

¶16. (SBU) Veto reform ultimately rests with the current permanent members since Article 108 of the UN Charter states that amendments to the Charter require ratification by two-thirds of the members of the UN, including all the permanent members of the Security Council. Several delegations tried to bait the permanent members into action.

The St. Vincent and the Grenadines Perm Rep said that if the P-5 does not accept reform, their future actions will be rendered illegitimate. The Canadian Perm Rep said, "Modest change is only unrealistic if those who possess it won't consider it."

¶17. (SBU) All five permanent members spoke over the course of the three sessions, but only Russia, the UK, and the United States clearly articulated the view that a change to the current veto structure is not realistic. The Russian Deputy Perm Rep said it was unrealistic to count on changes to current member prerogatives and that it would be wrong to raise questions about the existing competencies of members of the Council. He urged the membership to focus on those aspects of reform that are highly relevant. The UK Perm Rep reminded the room that the veto was a historical fact meant to overcome the deficiencies of the League of Nations. He stated that it should not be extended to new permanent members since it would not add to the effectiveness of the Council. He, too, stressed the need for an expansion that will "win the support of Charter amendments."

¶18. (SBU) Ambassador Wolff, speaking at the end of the second session, again stressed the need to bear in mind that whatever formula emerges for an expansion of Council membership must factor in Charter requirements for ratification, so, as a practical matter, we should avoid dwelling excessively on proposals that are unlikely to be fruitful avenues of pursuit. After reviewing U.S. openness in principle to a limited expansion of both permanent and non-permanent members, though any consideration of permanent members must be by definition country-specific in nature, he

said that the United States is not open to an enlargement of the Security Council with a change to the current veto structure.

¶19. (SBU) The French Perm Rep did not specifically address his country's position on extending the veto. Instead, he described the "heavy responsibility" of the veto and noted France's exercise of it only 18 times, most recently in 1989.

He urged the membership not to block reform with discussion of the veto and urged a closer review of the intermediate option and postponement of the veto question until a review conference in the future. China, speaking during the third session, also avoided setting down a marker. The Chinese representative, while noting the historical nature of the veto, described it as a mechanism that forced the Council to act with permanent member unanimity and ensured the need for sufficient support from non-permanent members. He specifically noted that China was the only developing country among the P-5 and had prudently exercise its veto power since assuming the Chinese seat in 1971. He ended with a call for the Council to improve its working methods and efficiency.

Next meetings

¶20. (SBU) At the end of the March 17 session, Tanin announced the dates of the upcoming meetings. The next meeting will be March 24 on "regional representation," followed by a meeting April 9 on the "size of an enlarged Council and working methods of the Security Council" and a meeting April 21 on "the relationship between the Council and the General Assembly."

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